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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,113	01/07/2004	Francisco J. Napolez	2973-A-34	5216

7590 10/18/2004
Cahill, von Hellens & Glazer P.L.C.
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EXAMINER

HAYES, BRET C

ART UNIT PAPER NUMBER

3644

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/753,113

Applicant(s)

NAPOLEZ ET AL.

Examiner

Bret C Hayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☒ Claim(s) 1,6 and 8 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>01/07/2004</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Objections

1. Claims 1, 6, and 8 are objected to because of the following informalities: (claim 1) line 2, “the animal’s” should be --the dog’s-- as that is the limitation previously recited; and (claims 6 and 8) lines 3 and 5, respectively, remove “means of”, for clarity – “means” type language should be restricted to usages such as, in this case, “vibration sensing means” or “means for sensing vibration”. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 – 9 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 6,263,836 B1 to Hollis.

4. Re – claims 1, 3 and 8, Hollis discloses the claimed invention including: a) a housing **10**; b) first and second electrodes **13**; a vibration sensor* – while Hollis does not explicitly state a vibration sensor, since vocalizations (sounds) inherently vibrate the surrounding medium (air, in this case), it would be inherent to use a vibration sensor; d) control circuitry **32**; e) a motion detector **50**; and, f) the circuitry coupled to receive the motion detection signal and operative to produce the aversive stimulus signal.

5. Re – claims 2, 4 and 9, Hollis further discloses a reset function, see Fig. 6, for example.

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6. Re – claim 5, Hollis further discloses a battery monitor, set forth at col. 4, line 1, and an LED 15 as claimed.

7. Re – method claims 6 and 7, in view of the structure disclosed by Hollis, the method of operating the device would have been inherent, since it is the normal and logical manner in which the device could be used.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Alternatively, claim 5 rejected under 35 U.S.C. 103(a) as being unpatentable over Hollis.

10. Hollis discloses the claimed invention except for explicitly stating the claimed circuit connectors *per se*; for example, high impedance, driver, resistors, transistors, etc. It would have been obvious to one having ordinary skill in the art at the time the invention was made to implement these various connectors, since these are well known in the electronics art and since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70.

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Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (703) 305 – 7421. The fax number is (703) 872 – 9306.

bh

10/12/04

A handwritten signature in black ink, appearing to read 'Teri P. Luu', with a stylized, flowing script.

**TERI P. LUU
SUPERVISORY PRIMARY EXAMINER**